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CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

Nos. **281-282**

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF
CHICAGO, AND OTHERS,
Respondents.

PETITIONER'S REPLY TO THE ANSWER.

WEIGHTSTILL WOODS,
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PETITIONER'S REPLY TO THE ANSWER.

Respondents' answer does not attempt to discuss the three most important "Principal Questions Presented". Question "A" at page 36 of the Petition, "B" at page 38 and "C" at page 46, together with your petitioner's conclusions, are all unchallenged and admitted. The failure by respondents to assign error to the District Court's findings, as disclosed by the digest at pages 63-68 of the petition, is likewise conclusive since respondents by failing to question this summary have admitted its accuracy. The charge by petitioner as to the fundamental breach of trust by respondents, is not discussed nor denied in respondents' answer.

Respondents say (page 10 of answer) that they resent the charge that they are part of the surging trend toward

untrustworthy trusteeships, which trend is rampant in Chicago. This petitioner states that such trend is the exact situation. Petitioner respectfully states also that the Circuit Court of Appeals for the Seventh Circuit has adopted a policy of making large fee awards to lawyers, bondholders' committees and trustees in corporate reorganization cases, and that this policy has given impetus to the widespread abuses complained of. Respondents are promoting this dangerous policy.

THE CIRCUIT COURT OF APPEALS IS "GENEROUS".

This petitioner in tracing to its source this dangerous trend toward the breakdown of trust relationships, respectfully shows that he has found the real reason for multiple, adverse and undisclosed breaches of trust conduct. Fee awards are so high, that trust companies and lawyers regard the risk of being "found out" as worth taking. Who is responsible for the high fee awards? Not the United States District Court sitting in Chicago. Its efforts have been in the opposite direction.

This petitioner has made a study of the fees awarded by the United States Circuit Court of Appeals for the Seventh Circuit, and now submits what he found. The chart from this study is included as a part of this reply. (Appendix "A".)

In the Seventh Circuit since 1935, when fee appeals from corporate reorganization cases began, the Court of Appeals has

- (1) increased the fees in seventeen appeals,
- (2) has decreased the fees in *only two* cases.

This shows a policy and an attitude. It shows that policy and attitude upon which respondents and other Chicago professional reorganizers have learned to profit.

So bold are these reorganizers that when a District Judge refuses to be "generous" they go to the Circuit Court of Appeals and ask that court for writs of prohibition against the Judge. (*Davis v. Barnes*, Judge, 105 Fed. (2d) 226.)

Your petitioner urges that such practices are all against the purpose of reorganization laws. All of this continues despite Your Honors' direction that,

"The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of paragraph 77B was to place those fees under more effective control." (*Dickinson Industrial Site v. Cowan*, 309 U. S. 382 at 388, 1940.)

Petitioner submits that the Circuit Court of Appeals for the Seventh Circuit have not heeded the main purpose of 77B nor the Chandler Act. The fact is that the fees situation is under less control in this circuit than ever before.

The primary freedom under protection by this court is the inviolability of property right. When that property is siphoned away as swollen fees and expenses of sundry kinds in the federal courts, the heart of the constitution is swept away. The citizen receives, not protection but spoliation. The case at bar is an adequate example.

IN CONCLUSION.

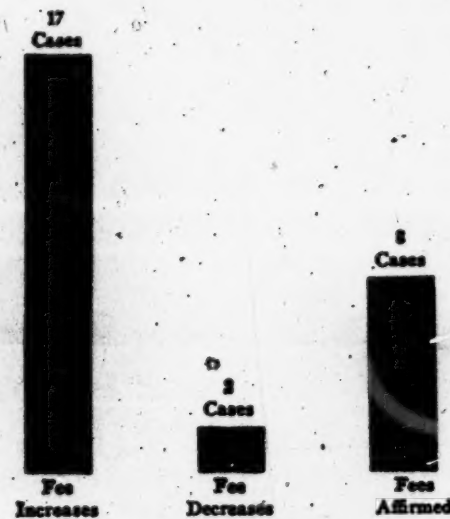
WHEREFORE, your petitioner prays that a writ of certiorari be granted him as prayed for in his original petition.

WEIGHTSTILL WOODS,
Attorney for Petitioner.

Appendix A to Reply by Court Trustee

FIVE AND ONE-HALF YEARS OF CORPORATE REORGANIZATION FEE APPEALS IN THE SEVENTH CIRCUIT COURT OF APPEALS

From Insull to Granada 1935-1940



In the 27 fee appeals by lawyers, bondholders committees and trustees in corporate reorganization proceedings the Circuit Court of Appeals for the Seventh Circuit has in:

- 17 cases increased the fees above the award of the District Court Judge;
- 2 cases decreased the fees below the award of the District Court Judge; and in
- 8 cases has affirmed the fee allowance of the District Court Judge.

THE SEVENTEEN CASES WHEREIN FEES WERE INCREASED ON APPEAL

Title of Case and Citation	Date	Type of Case	Disposition of Case on Appeal
1. Bondholder's Protective Committee vs. Milwaukee Lodge No. 46. (83 Fed. (2d) 662.)	4/29/36	Reorganization Committee and depositary fee and expenses case. (Lawyer's fee included in committee claim.) Disallowed.	Reversed—Held that court erred in disallowing committee's compensation and expense claim, because committee occupied adverse relation to debtor. (INCREASE.)
2. Chicago Title & Trust Co. vs. Tudor Gables Building Corp. (83 Fed. (2d) 871.)	5/ 1/36	Reorganization Committee fee claim case. Fees denied to Committee.	Reversed—Held that court erred in saying it could not give fees for services of committee rendered prior to reorganization, and cause is reversed to fix value, if any, of those services. (INCREASE.)
3. In re Grocery Center, Inc. (83 Fed. (2d) 617.)	5/29/36	Reorganization attorney's fee claim case. (Asked \$7,000.) Disallowed.	Reversed, held that court's refusal to allow fees to attorneys for interveners because it would be a dangerous precedent and bad practice was error and was a refusal to comply with statute which says court "may allow" such interveners fee allowances. (INCREASE.)
4. In re T. L. Smith Company. (83 Fed. (2d) 665.)	5/29/36	Reorganization committee's claim for attorneys fees, etc. disallowed because of adverse positions of claimants.	Reversed, held that court erred in disallowing committee's claim for fees, expenses and attorneys fees on ground that claimants held position adverse to debtor. (INCREASE.)
5. City National Bank & Trust Company of Chicago vs. Sheridan-Malrose Building Corporation. (86 Fed. (2d) 2.)	10/22/36	Reorganization case wherein Trustee (City National) and Bondholders Committee (C. S. Tuttle, et al.) asked Federal Court to allow fees for services rendered prior to Federal Reorganization proceedings. Fees denied.	Reversed, held that District Court had authority and should fix reasonable compensation for services rendered by attorneys and others for the parties prior to filing of Federal reorganization proceedings. (INCREASE.)
6. Chicago Title & Trust Co. vs. 7000 South Shore Drive Building Corp. (86 Fed. (2d) 499.)	11/ 7/36	Reorganization case, fixing fees for lawyer's services in another case in a state court on accounting of trustee in Federal District Court.	Reversed, held that District Court was without jurisdiction to eliminate credit on trustee's account of \$3,000 paid to attorney in another case in state court. (INCREASE.)
7. Chicago Title & Trust Co. vs. Deluxe Court Apartments, Inc. (86 Fed. (2d) 772.)	12/10/36	Reorganization case, fixing of fees for state court services and bankruptcy services of trustee and lawyers on accounting of trustee in Federal District Court.	Reversed, held that District Court had no authority to reduce fees awarded by state court to attorneys from \$4,000 to \$1,500, of trustee from \$1,100 to \$300. (INCREASE.)
8. Chicago Title & Trust Company vs. 1030 North Dearborn Building Corporation. (86 Fed. (2d) 775.)	12/10/36	Reorganization case, fixing fees for trustee's and lawyer's services in both state court foreclosure case and bankruptcy proceedings on accounting in Federal District Court.	Reversed, held that District Court had no authority to disallow \$14,000 item for lawyers fees in accounting of trustee. Such fee having been allowed in state court foreclosure decree. (INCREASE.)
9. In re Tower Building Corp. (88 Fed. (2d) 347.)	2/23/37	Reorganization fee case wherein committee asked for compensation and expenses in addition to \$19,980 paid prior to Federal reorganization proceedings. District Court holds that present claim of \$25,939.23 is set off by prior payment.	Reversed, held that District Court had no jurisdiction to offset prior payment against present fees. (INCREASE.) (For subsequent proceedings on fee claims see <i>Davis, v. Barnes, Judge</i> , 105 F. (2d) 226 wherein a writ of prohibition was sought against the trial court by the Bondholders Committee.)
10. Strauss vs. Pine Block Building Corporation. (90 Fed. (2d) 238.)	5/22/37	Reorganization fee case wherein state court in foreclosure action had allowed trustee and attorney a total \$7,550 for services rendered and "to be rendered" which District Court reduced to \$2,250 and also disallowed an expense item in trustee's account.	Reversed, in part, held that services "to be performed" allowed reduction of fees by District Court but that court was without jurisdiction to disallow expense item already incurred. (INCREASE.)
11. Bondholder's Committee vs. Central Shorewood Building Corporation. (90 Fed. (2d) 725.)	6/14/37	Reorganization fee case wherein (1) attorney in state court foreclosure proceedings was allowed fees (which were not ordered paid) which fees were reduced by the District Judge and (2) the bondholder's committee claimed a \$1,000 fee which was wholly disallowed.	Modified and not remanded. Circuit Court of Appeals holds that District Judge should (1) not have reduced fee award of attorney in foreclosure proceedings and (2) should have allowed in full claim of committee for its and counsel services. (INCREASE.)
12. In re Shorewater Corporation. (94 Fed. (2d) 261.)	1/21/38	Reorganization fee case wherein state foreclosure court had ordered payment of certain fee to attorney and District Court Judge had in Federal proceedings disallowed attorney's claim.	Reversed, and claim of attorney ordered paid in full on basis that (1) District Court had no jurisdiction to disallow fee fixed by state court and (2) that claim was reasonable. (INCREASE.)
13. In re Watco Corporation. (95 Fed. (2d) 249.)	2/ 5/38	Reorganization fee case wherein District Court (1) reduced the fees as awarded to lawyer by state court foreclosure decree and (2) disallowed in total all claims for legal services rendered in Federal reorganization proceedings.	Modified (Reversed) so as to provide for payment in full of all claims by three law firms based on state court decree despite fact that: "The property has not been able to pay all the taxes which have been assessed against it. The bondholders have received no interest for many long seasons." (Opinion of the court at page 251.) (INCREASE.)
14. In re Buildings Development Co. (98 Fed. (2d) 841.)	7/27/38	Reorganization fee case wherein former trustee made claim for services performed prior to Federal reorganization proceedings which claim was disallowed by District Court Judge because (1) claimant's only services were performed for creditors; i. e., bondholders and not for debtor, (2) claimant's services were not performed in reorganization proceedings.	Reversed, held that claim should be allowed because trust deed so provided. Cause remanded for reconsideration and for determination of amount of allowance to be made. (INCREASE.)
15. Empire Building Protective Committee vs. Buildings Development Company. (98 Fed. (2d) 844.)	7/27/38	Reorganization fee case wherein a bondholders protective committee made claim for (1) services rendered prior to reorganization proceedings and (2) services rendered after institution of such proceedings, both of which were disallowed by District Court.	Reversed, held that although court could exercise discretion as to (1) that court as a matter of law was bound to grant claim (2) and could not refuse to award such compensation as it should after hearing it. (INCREASE.)
16. In re Albert Dickinson Co. (104 F. (2d) 771.)	5/22/39	Reorganization fee claim case wherein District Court allowed the Bondholder's Committee \$2,000 instead of the \$25,000 claimed. Appeal by the Committee.	Modified, held that the allowance was an abuse of discretion and fees of Bondholders' Committee fixed at \$10,000,—not remanded. (INCREASE.)
17. In re Granada Apartments, Inc. (111 Fed. (2d) 834.)	3/26/40	Reorganization fee claim case wherein District Court disallowed (1) claim of committee, (2) claim of attorneys for work done in state court foreclosure proceedings and (3) claim of state court trustee on basis that the funds and branches of trust of the parties disallowed them to fees and that their services did not contribute to the debtor estate. Claim of trustee \$10,540.95 (including solicitor's fees of \$9,250). Claim of committee for expenses incurred \$2,250.21 plus fees. Claim of attorneys was not stated except as "reasonable."	Reversed, held that all parties should be paid on a reasonable basis for their services and that additional \$500 for the former trustee, \$4,435.31 for the committee and \$10,000 for attorneys were inadequate and should all be increased. (INCREASE.)

16. In re Albert Dickinson Co. (104 F. (2d) 771.) 5/22/39
17. In re Granada Apartments, Inc. (111 Fed. (2d) 834.) 3/26/40

Reorganization fee claim case wherein District Court allowed the Bondholder's Committee \$2,000 instead of the \$20,000 claimed. Appeal by the Committee.

Reorganization fee claim case wherein District Court disallowed (1) claim of committee, (2) claim of attorneys for work done in state court foreclosure proceedings and (3) claim of state court trustee on basis that the frauds and breaches of trust of the parties disentitled them to fees and that their services did not contribute to the debtor estate. Claim of trustee \$10,848.90 (including solicitors' fees of \$8,250). Claim of committee for expenses incurred \$2,365.21 plus fees. Claim of attorneys was not stated except as "reasonable."

Modified, held that the allowance was an abuse of discretion and fees of Bondholders' Committee fixed at \$10,000—not remanded. (INCREASE.)

Reversed, held that all parties should be paid on a reasonable basis for their services and that additional \$500 for the former trustee, \$4,483.31 for the committee and \$10,000 for attorneys were inadequate and should all be increased. (INCREASE.)

THE TWO CASES WHEREIN FEES WERE DECREASED ON APPEAL.

1. In re Irving-Austin Building Corp. (100 Fed. (2d) 574.) 11/ 3/38
2. In re Forty-one Thirty-six Wilcox Building Corporation. (100 Fed. (2d) 588.) 12/15/38

Reorganization fee case wherein \$78,500 was allowed as total fees to several law firms who conducted an investigation as to alleged frauds and breaches of trust by officers of the debtor corporation.

Reorganization case wherein fees were allowed attorneys for debtor after United States Supreme Court had determined that there was no jurisdiction for reorganization proceedings.

Modified, held that a total of \$10,000 was a sufficient fee since the finding of the Master was of doubtful soundness and amount in controversy was less than one-third of amount of fees charged. (DECREASE.)

Reversed, held that work of attorneys did not contribute to a plan of organization or benefit the estate and that District Court had no jurisdiction so could not award fees. (DECREASE.)

THE EIGHT CASES WHEREIN THE CIRCUIT COURT OF APPEALS AFFIRMED THE FEE ALLOWANCES OF THE DISTRICT COURT JUDGE.

1. In re Insull Utilities Investments, Inc. (74 Fed. (2d) 510.) 1/ 2/35
2. In re A. Herz, Inc. (81 Fed. (2d) 511.) 1/31/36
3. In re National Lock Company. (82 Fed. (2d) 600.) 4/13/36
4. In re Bryn-ken Corporation. (83 Fed. (2d) 873.) 5/13/36
5. In re 333 North Michigan Ave. Building Corp. (84 Fed. (2d) 936.) 7/ 1/36
6. Hoffenberg vs. 103 North Dearborn Building Corporation. (86 Fed. (2d) 187.) 10/28/36
7. In re Park Beach Hotel Building Corporation. (96 Fed. (2d) 886.) 6/28/38
8. In re Mayfair Building Corp. (97 Fed. (2d) 826.) 7/ 2/38

Bankruptcy fee case.

Reorganization fee case.

Reorganization fee case.

Reorganization fee claim case.

Reorganization Plan case.

Reorganization case wherein attorney contended that money claimed by Federal Trustee was his fee for services in state court foreclosure proceedings.

Reorganization fee case wherein (1) after Federal proceedings had started state court receiver obtained fee payment order from state court which District Judge disallowed on the accounting and ordered funds returned; and (2) District Court allowed fee to auditors for work done on accounting in Federal Court without hearing testimony as to reasonableness of charge and (3) ordered state court receiver to pay costs of the hearing and accounting proceedings.

Reorganization fee case wherein a bondholders' committee petitioned for fees and expenses of \$5,150 which the District Court allowed after deducting \$2,000 previously paid the committee. From the deduction the committee appealed.

Affirmed, \$12,500 for Receiver; \$12,500 for one firm of attorneys; \$12,500 for another firm of attorneys.

Already paid all parties and no further fees should be paid. (SAME.)

Affirmed, no fees to committee or attorneys of creditors. (SAME.)

Fees to attorney properly made; fees to committee properly denied—affirmed. (\$1,946.23 to committee, \$3,000 to attorneys.) (SAME.)

Affirmed, held trustee not entitled to more than \$750.00 for attorneys services in state foreclosure action, since trustee had lien which was undisclosed to court. (SAME.)

Affirmed, held that plan of reorganization properly provided for payment of \$115,000 to reorganization manager for work in state court prior to 778 proceedings and that this amount as allowed was proper. (SAME.)

Affirmed, held that the right of attorney to money (\$2,941.11) had not been adjudicated by state court and that District Court was not in error entering judgment against attorney for amount retained by him. (SAME.)

Reversed in part and Affirmed in part, held that District Court was correct as to (1) and (3) but erred as to (2). Case remanded with directions to hear evidence on auditors' claim of \$991.60. (SAME.)

Affirmed, held that the committee had rendered services for many other bankrupt estates and that no showing was made as to what proportion of expenses were incurred in services rendered exclusively for debtor estate and what proportion for other estates, and that trial court was justified in making Reduction. (SAME.)